

RE: AGREEMENT WITH OZARK ELECTRIC FOR UTILITY RELOCATIONS ON MAIN STREET

RESOLUTION #2025-45

Background:

With most, if not all major construction projects, utility re-locations are an important portion that takes a great deal of cooperation and coordination from all parties involved. When third-party utilities are located within their own individual easements, outside of public right-of-way, it is our responsibility to re-imburse or pay for these relocations, and any Engineering when necessary.

On the North Main Street expansion project, Ozark Electric assets, within their own easement, need to be moved to accommodate the new roadway, sidewalk extensions and stormwater improvements. Ozark Electric has proposed the attached agreement to reclaim these costs.

Analysis:

In the terms of this agreement, Ozark Electric is requesting \$353,889.00 for relocation and underground infrastructure necessary to stay appropriate distances from other electric providers within the project limits.

Recommendation:

It is staff's recommendation that Council pass this Resolution and enter into this Agreement with Ozark Electric so that these utilities can be relocated for the North Main Street expansion project (CIP # ST 2022-03).

MEMO PREPARED BY:

Jeff Roussell | Street Superintendent

jroussell@nixa.com | 417-725-2353

RESOLUTION NO. 2025-45

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT, IN AN AMOUNT NOT TO EXCEED \$353,889.00, WITH OZARK ELECTRIC COOPERATIVE, INC., FOR CERTAIN UTILITY RELOCATIONS.

WHEREAS the City is currently engaged in a construction Project referenced as “Main Street Improvements from Tracker Road to Highway CC (federal project No. STBG-9901(831)”; and

WHEREAS said Project will require Ozark Electric Cooperative, Inc., to relocate certain utility assets within the Project area; and

WHEREAS the City and the Cooperative have agreed to terms to facilitate the relocation of the Cooperative’s utility assets located within the Project area; and

WHEREAS the City Council desires to authorize the City Administrator to execute a contract, in an amount not to exceed \$353,889.00, with Ozark Electric Cooperative, Inc., to facilitate utility relocations within the Project area.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: The City Council hereby authorizes the City Administrator, or designee, to execute an “Agreement for Certain Utility Relocations” with Ozark Electric Cooperative, Inc., in an amount not to exceed \$353,889.00. Said Agreement shall be in substantially similar form as “Resolution Exhibit A,” which is attached hereto and incorporated herein by this reference as though fully set out herein.

SECTION 2: The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

SECTION 3: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

[Remainder of page intentionally left blank. Signatures follow on the next page.]

RESOLUTION NO. 2025-45

ADOPTED BY THE COUNCIL THIS 23RD DAY OF SEPTEMBER 2025.

ATTEST:

PRESIDING OFFICER

CITY CLERK

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2025.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EFFECTIVE DATE: _____

TERMINATION DATE: _____

CONTRACT NUMBER: _____

AGREEMENT FOR CERTAIN UTILITY RELOCATIONS

THIS AGREEMENT FOR CERTAIN UTILITY RELOCATIONS ("Contract") is made and entered into upon its execution by the City of Nixa, Missouri, a Constitutional Charter City organized under the laws of the State of Missouri ("City") and the Ozark Electric Cooperative, Inc. an electric utility Cooperative of the State of Missouri.

WHEREAS the City is currently engaged in a project referenced as "Main Street Improvements from Tracker Road to Highway CC (federal project No. STBG-9901(831)"; and

WHEREAS said Project is described more fully herein; and

WHEREAS the Project will require the Cooperative to relocate certain utility assets within the Project area; and

WHEREAS the Cooperative will incur costs associated with relocating its assets as a result of the Project; and

WHEREAS the City and the Cooperative have agreed to the terms of this Contract to facilitate the relocation of the Cooperative's utility assets located in the Project area.

NOW, THEREFORE, for the considerations herein expressed, it is mutually agreed by and between the City and the Cooperative as follows:

1. Project Description. This Contract references the construction of road improvements between Tracker Road and Highway CC in Christian County, Missouri, referred to as Main Street Improvements from Tracker Road to Highway CC (federal project No. STBG-9901(831) (the "Project"). The Project includes relocating approximately 0.25 miles of three phase 12kV distribution under build and adjacent taps and services of the Cooperative.

2. City's Responsibilities. Regarding the City's obligations under this Contract, City agrees to perform the following:

2.1. The City shall be responsible for reimbursing the Cooperative in an amount not to exceed **\$353,889.00**. This amount is anticipated to cover the Cooperative's construction, material, management and engineering, and administrative costs for relocating their utility assets as a result of the Project.

3. Cooperative's Responsibilities. Regarding the Cooperative's obligations under this Contract, the Cooperative agrees to perform the following:

3.1. The Cooperative shall be responsible for any costs that exceed the City's responsibility set forth in Paragraph 2.

3.2. The Cooperative shall be responsible for maintaining their utility assets once relocated. The City shall not be responsible for any future repairs, modifications, or alterations of the relocated assets. Any future relocation costs necessitated by the City's future improvements or

modifications shall be addressed in accordance with Missouri law.

3.3. The Cooperative shall not object, delay, or dispute any condemnation instituted by the City to acquire any property rights or interests that are related to the Project.

3.4. The Cooperative shall not unreasonably hinder or delay the Project by any means.

4. Payment.

4.1. The Cooperative shall submit to the City, on not more than a monthly basis, invoices for amounts due for any reimbursable work performed in connection with the Project. For purposes of this Contract, reimbursable work shall refer to any relocation of the Cooperative's assets that is reasonably required as part of the Project.

4.2. The City shall have 30 days to pay such invoices if the work detailed on said invoices is for any reimbursable work performed in connection with the Project.

5. Term. This Contract shall commence upon its full execution by the Parties and shall continue until the completion of the construction of the Project.

6. Conflict of Interest. The Cooperative certifies that no member or officer of its firm or organization is an officer or employee of the City of Nixa, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest in this Contract which would violate any applicable federal regulations or the provisions of RSMo. Section 105.450 et seq or the provisions of Nixa City Charter Section 13.1.

7. Assignment. Neither party may assign, transfer, or delegate any of its rights or obligations under this Contract, including by operation of law, change of control, or merger, without the prior written consent of the other party. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8. Liability and Indemnity.

8.1. In no event shall the City be liable to the Cooperative for indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Cooperative under this contract. This provision is intended only to limit liability for contract or related claims in equity and does not restrict Cooperative's ability to recover for tort claims.

8.2. The Cooperative shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, Cooperative's negligent or wrongful intentional acts, including, but not limited to, claims for personal injuries, death, property damage, or for damages arising out of this Contract, except to the extent caused by negligence, whether sole or concurrent, on the part of third parties, or the City, its officials, agents and employees.

8.3. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

8.4. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

9. Contract Documents.

9.1. This Contract constitutes the entire agreement of the parties.

9.2. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto and signed by both parties.

10. Notices.

10.1. All notices required or permitted hereinunder and required to be in writing may be given by Electronic Mail or by first-class mail addressed to the City and the Cooperative at the addresses shown below:

To City:

Name: City of Nixa, Missouri
Address: 715 W. Mt. Vernon St., PO Box 395, Nixa MO 65714
Phone: 417.725.3785
Email: jroussell@nixa.com
Attn: Jeff Roussell
Dept: Streets

To Cooperative:

Name: Ozark Electric Cooperative, Inc.
Address: Hwy. AA, P.O. Box 1050
Phone: 417-724-5509
Email: lhaden@ozarkelectric.com
Attn: Logan Haden

10.2. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by Electronic Mail transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

10.3. Notice information may be updated by the respective party upon reasonable notice of such change to the other party.

11. No Third-Party Beneficiaries. This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Contract.

12. Jurisdiction. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri, without giving effect to any choice or conflict of law provision or rule which would cause the application of the laws of any jurisdiction other than those of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Courts of Christian County, Missouri. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

13. Waiver of Jury Trial. Each party irrevocably and unconditional waives any right it may have to a trial by a jury in respect to any legal action arising out of or relating to this Contract or the transaction contemplated thereby. The provisions of this Paragraph shall survive the termination or expiration of this Contract.

14. Severability. If any term or provision of this Contract is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision.

15. Headings. The headings in this Contract are for reference only and shall not affect the interpretation of this Contract.

16. Interpretation. This Contract shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

[Remainder of page intentionally left blank. Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have set their hands on the day and year herein stated.

CITY

COOPERATIVE

Jimmy Liles, City Administrator

Authorized Signer

Date: _____

Date: _____

ATTEST:

Printed Name

Rebekka Coffey, City Clerk

Title

Approved as to form:

Nick Woodman, City Attorney

Director of Finance Certification:

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Jennifer Evans, Director of Finance

COOPERATIVE VERIFICATION

State of _____

County of _____

On this ____ day of _____, 20____, before me personally appeared _____, for the _____, known to me to be the person described in and who executed the above agreement and acknowledged to me that they executed the same as their free act and deed on behalf of said entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

Notary Public

My commission expires: _____.